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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MERCURY INSURANCE COMPANY, Plaintiff and Appellant, v. GEICO GENERAL INSURANCE COMPANY, Defendant and Respondent.	G045557 (Super. Ct. No. 30-2010-00337216) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jamoa A. Moberly, Judge. Affirmed.

O'Connor, Schmeltzer & O'Connor, Lee P. O'Connor and Timothy J. O'Connor, for Plaintiff and Appellant.

Law Office of Eric G. Bluemke, Eric G. Bluemke and Christina Kang, for Defendant and Respondent.

INTRODUCTION

"In our society," observed a reviewing court over 35 years ago, "children generally expect to leave their parents' households at some point after adulthood . . . ." (*State Farm Mut. Auto. Ins. Co. v. Elkins* (1975) 52 Cal.App.3d 534, 539 (*Elkins*).) The economic turmoil of the last few years, however, has modified these expectations, or at least postponed their fulfillment, sometimes indefinitely. So-called "accordion families," in which adult children leave the home and then return, are becoming more and more common. Determining when a child ceased to reside with her parents is the central issue in this appeal.

Appellant Mercury Insurance Company and respondent GEICO General Insurance Company disagree about the amount of coverage a Mercury auto insurance policy provides to the daughter of the named insureds. Mercury insured the car driven by the daughter when she was involved in a traffic accident. Its policy afforded her the maximum policy limits if she "resided" with her parents; if she resided elsewhere, Mercury would pay only a minimum amount. GEICO, the company insuring both the daughter and her then-husband, would presumably pick up the rest.

The trial court found that Mercury had to pay the maximum amounts, because the driver, Lara Edelbaum, resided with her parents for coverage purposes. Mercury appeals.

Applying the standard rules for determining insurance coverage, we find the policy language ambiguous; accordingly, we must interpret the language to support the insured's objectively reasonable expectations and resolve ambiguities in favor of coverage. We do not, of course, disturb the trial court's factual findings when they are supported by substantial evidence, as they are here. We therefore affirm the judgment.

FACTS

Lara Edelbaum was in a traffic accident on January 11, 2008. At the time, she was driving her mother's car, which Mercury insured, with her mother's permission.

It is not necessary to recount the procedural history of this case. Suffice it to say that by the time it came to trial, it was a declaratory relief action between Mercury and GEICO about whether Lara was covered for the full amount of the Mercury policy – $250,000 per person and $500,000 per accident – or only the bare minimum – $15,000 per person and $30,000 per accident. The answer to this question turns in large part on the meaning of the word "reside" in the Mercury policy.

Lara's parents, David and Arline Edelbaum, were the named insureds on the declarations page of the Mercury policy. Arline's car – the one Lara had been driving when the accident occurred – was listed on the declarations page. The second page of the policy (or perhaps the back of the title page) included an "IMPORTANT NOTICE [¶] Unless drivers residing with the insured are NAMED in the declarations, coverage may not be afforded. If you desire coverage for drivers other than those shown, request your agent/broker to have your policy amended to list the additional drivers." Lara was not listed as a named insured or an additional driver.

Under the policy's "Liability" section (on the next page), the insuring clause provided: "Persons insured: The following are insured under Part I: [¶] (a) With respect to the owned automobile: [¶] (1) the named insured and any relative; [¶] (2) persons listed as drivers in the policy declarations; [¶] (3) any other person using an owned automobile, provided it is used with the permission of the named insured, express or implied, and within the scope of such permission, and persons residing with such permissive user and related to such permissive user by blood, marriage or adoption, including wards and foster children; [¶] (4) residents other than described in (a)(1) or (a)(2), above. [¶] If the policy declarations state bodily injury liability limits in excess of

$15,000 per person and $30,000 per accident and/or a property damage liability limit in excess of $5,000 per accident, then the coverage in excess of those limits shall not apply to the operation or use of a motor vehicle by a person described in subpart (a)(3) or (a)(4) other than an agent or an employee of the named insured in the scope of his employment. This limitation shall not apply to liability incurred by the named insured or a relative."[1]

On the following page, in the "Definitions" section, the policy defines "relative" as "a person who resides with the named insured and is related to the named insured by blood, marriage, or adoption and includes wards and foster children. Unmarried children, (including wards and foster children) of the named insured, residing elsewhere while attending school or in the armed forces, are considered to reside with the named insured, provided they are not emancipated."[2] The policy defines "resident" as "an individual who inhabits the same dwelling as the named insured."

The trial was conducted with a minimum of fuss. The parties stipulated to 23 facts and submitted a batch of exhibits and the transcripts of Lara's and David's depositions. Counsel argued briefly, and the court took the matter under submission.

The court ruled that Lara was residing with her parents at the time of the accident, and therefore Mercury had to pay up to the full amount of the policy limits, not the $15,000/$30,000 minimum. Mercury has appealed from this ruling.

The court had the following evidence before it when it made its ruling: Lara was 38 years old at the time of the accident. Lara's parents owned a house in Beverly Hills on Glenmont Avenue and had lived there for over 40 years; the Glenmont Avenue house was Lara's childhood home. Lara graduated from college in 1991 and

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[1] The insuring clause, it will be noted, is inconsistent with the "Important Notice." Nothing in the insuring clause – or in the definition of "relative" – requires relatives to be named on the declarations page. The only drivers who have to be specifically identified on the declarations page are named insureds and listed drivers. Perhaps that is why the "Important Notice" states that coverage "may" not be afforded.

[2] The application for the Mercury policy, which David filled out in 1996, informed the applicant that "[p]ersons currently age 12 or over, including unmarried children away at school or in the armed forces, will be excluded from coverage."

attended graduate school in Israel during the following two years. She lived with her parents both before and after going to Israel. After returning from Israel, she moved into her own place in West Hollywood for about a year, before moving to New York. Lara lived in New York for about six years, until September 2000. At that time, she moved back to the Glenmont Avenue address in Beverly Hills. She lived there until she married, in 2006.

Lara and her husband moved to their own place after the marriage, which lasted only 15 months. Sometime in 2007, Lara and her husband moved into the Glenmont Avenue house, because of financial considerations. Shortly thereafter, apparently in August 2007, the two separated.

At this point, a family friend, a widow, offered Lara accommodations in the friend's guesthouse on Alta Drive. Lara moved some of her possessions into the Alta Drive address in September 2007. She kept some of her things there until November or December of 2009. During this time, Lara was spending considerable time in New York; the man she was later to marry, whom she met in September 2008, lived there.

While she was in New York, Lara stayed in her sister's apartment, where she also kept some of her belongings. She testified that after separating from her first husband (in September 2007) she divided her time between New York and Los Angeles, spending several weeks in each place. In essence, she commuted between the two locations from September 2007 to December 2008. Lara could not estimate the amount of time between September 2007 (when she went to Alta Drive) and January 2008 (when the accident occurred) spent in New York, at the guesthouse on Alta Drive, or at her parents' home on Glenmont Avenue. In August 2009, Lara and her then-fiancé (now husband) moved to San Francisco; at that time, she moved her possessions out of her parents' house, her local storage locker, and her sister's New York apartment. She, her husband, and their new baby now live in San Francisco.

Among the exhibits submitted to the trial court were the traffic collision report for the January 2008 accident, the dissolution of marriage papers Lara signed on the day of the accident, two DMV reports, and Lara's Own-Recognizance Release Agreement, all of which give Glenmont Avenue as her address.[3] She also had a California driver's license, which listed the Glenmont Avenue address.

On the other side, the court had transcripts of two recorded telephone calls between a Mercury representative and Lara, during which Lara gave her address as the Alta Drive guesthouse and stated that she did not reside with David (her father) at the time of the accident. The parties also submitted a transcript of a telephone conversation on January 16, 2008, between David and a Mercury representative – and possibly a third person who may have been an attorney. During this phone call, someone (perhaps David or perhaps the attorney) gave Lara's address as the Alta Drive address. Mercury had Lara and David fill out residency statements, which were submitted as exhibits. Lara stated her current address was the Alta Drive guesthouse, but she considered the Glenmont Avenue address her permanent address. In the same statement, she also stated that on the date of the accident, she considered Alta Drive to be her permanent address. In September 2009 David signed a declaration stating that Lara did not reside at Glenmont Avenue on the date of the accident and had not resided there since September 1, 2007.[4] Lara filled out a similar statement (undated), in which she listed three addresses as her place of residency at the time of the accident – her sister's apartment in New York, the Alta Drive address, and the Glenmont Avenue address for mail "since my address

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[3] The last exhibit includes her sister's address in New York as well as the Beverly Hills address. At the time of the accident, Lara was taken in to custody for driving under the influence of alcohol.

[4] When asked at his deposition to give his definition of a resident, David stated, "I think a resident is someone who lives [at] an address permanently." That was what he understood the term to mean when he signed his September 2009 declaration.

When asked how often Lara stayed at the Glenmont Avenue address, David responded, "Sometimes when she was in town. I mean, it's our home. It's her home, she can come and go as she pleased. But if you're asking if she was a permanent resident there, the answer's no. She would pop in and out or she might spend the night with us, something like that."

henceforth [*sic*] changed frequently." Finally, the parties submitted Lara's interrogatory and request for admission responses giving all three addresses as her residence address.

The court found Lara was residing with her parents when the accident occurred, in January 2008, for purposes of the Mercury policy. "At the time of the accident, Lara was a woman in transition and had three residences at the time of the subject accident, with two of those in Beverly Hills." The court determined that after Lara and her first husband moved to Glenmont Avenue because they were "short on funds," "Lara never moved out fully but rather kept one foot in her parent's [*sic*] home as she stayed at her sister's in New York or the guest house . . . ." Accordingly, Mercury was obligated to pay up to the policy limits, not the minimum.

DISCUSSION

The interpretation of an insurance policy is a question of law, which we review de novo. (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 18.) The mutual intent of the parties at the time the contract was formed governs the interpretation of an insurance contract. (*AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 821 (*AIU*).) To the extent the trial court resolved conflicts in the evidence, we do not reweigh it. (*Bluehawk v. Continental Ins. Co.* (1996) 50 Cal.App.4th 1126, 1132 (*Bluehawk*).) If substantial evidence supports the court's findings, we do not disturb them. (*Wausau Underwriters Ins. Co. v. Unigard Security Ins. Co.* (1998) 68 Cal.App.4th 1030, 1038.)

I. Policy Interpretation

In this case, the initial dispute centers on the meaning of "reside" in Mercury's auto insurance policy. We first try to determine the parties' mutual intent at the time the contract was formed from the plain meaning of the word, used in its "'ordinary and popular sense.'" (*AIU, supra*, 51 Cal.3d at pp. 821-822, quoting Civ. Code, § 1644.) We construe the terms of the policy as a whole and in the circumstances of the case, not in the abstract. (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1265.) If the language is ambiguous, we try to resolve the ambiguity by

interpreting it as the insurer believed the insured understood the ambiguous provision at the time the contract was formed; we protect the "objectively reasonable expectations of the insured." (*AIU, supra,* 51 Cal.3d at p. 822.) Finally, if these two interpretive guides do not resolve the issue, we construe the ambiguous language against the insurer, usually in favor of coverage. (*Ibid*.) Any exclusion or limitation of coverage must be "'"conspicuous, plain, and clear"'" (*MacKinnon v. Truck Ins. Exchange*, *supra*, 31 Cal.4th at p. 648, quoting *State Farm Mut. Auto. Ins. Co. v. Jacobar* (1973) 10 Cal.3d 193, 201-202) to be effective, especially when the policy's coverage portion "would lead the insured to reasonably expect coverage. . . ." (*MacKinnon v. Truck Ins. Exchange*, *supra,* 31 Cal.4th at p. 648.)

A. Plain Meaning and Ambiguity

Black's Law Dictionary defines "reside" as meaning "[l]ive, dwell, abide, sojourn, stay, remain, lodge. [Citation.] To settle oneself or a thing in a place, to be stationed, to remain or stay, to dwell permanently or continuously, to have a settled abode for a time, to have one's residence or domicile." (Black's Law Dict. (5th ed. 1979) p. 1176, col. 2.) Other dictionaries echo these definitions. (See Webster's 3d New Internat. Dict. (1981) p. 1931; Webster's New Collegiate Dict. (1974) p. 984.)

While dictionary definitions are not conclusive, they can provide a useful starting point. (See *MacKinnon v. Truck Ins. Exchange*, *supra*, 31 Cal.4th at p. 648.) These dictionary definitions show that some of the meanings apply to Lara's presence at her parents' house at the time of the accident ("stay," "sojourn," "lodge,") and some do not ("dwell permanently" "have a settled abode for a time"). The court's task is to interpret the policy language as the ordinary layman would. (*Ibid*.) We therefore look to the policy itself to see whether we can determine the plain meaning of "reside" for coverage purposes.

The Mercury policy does not include a definition of "reside." It does give a clue to the meaning, however. The definition of "relative" states that that unmarried,

unemancipated children "residing elsewhere while attending school or in the armed forces are considered to reside with the named insured . . . ." If a child "residing" at college for most of the year or "residing" on a military base can still "reside" with his or her parents, clearly "reside" does not require physical presence in the home every day.

Other policy provisions also bear on the meaning of "reside." Residents are treated separately, and differently, from relatives.[5] As defined in the policy, a "resident" must "inhabit the same dwelling as the named insured." There is no corresponding requirement that relatives inhabit any dwelling, only that they "reside with" the named insured. Apparently "inhabit" and "reside" are not the same thing; it would also appear that "inhabiting" is more restrictive than "residing," because it must take place in the named insured's dwelling. The insuring clause, however, confuses matters by providing coverage for "residents *other than*" the named insured, any relative, and listed drivers, implying that all these people are residents too. But there is no requirement in the policy that listed drivers "reside with" the named insured or "inhabit" his dwelling; if they are listed, they are covered. And the named insured cannot be a "resident"; he would have to inhabit the same dwelling as himself.

Each insurer has provided us with a case it advances to support its side of the argument. Mercury likes *Bluehawk, supra*, 50 Cal.App.4th 1126, in which the court found the son involved in the traffic accident did not reside with his insured mother. The mother had kicked the son, who was in his 20's, out of her house before she applied for car insurance. She deliberately did not list him as an additional driver. The accident took place about nine months after she applied for insurance. (*Id.* at p. 1128.)

The Continental policy insured the mother "and members of her household," defined as "'a resident of [the mother's] household who is . . . related to [her] by blood . . . .'" (*Bluehawk, supra*, 50 Cal.App.4th at p. 1128.) The trial court found that

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[5] Among other distinctions, relatives are entitled to full policy limits coverage in accidents with insured cars; residents get the minimum.

the son was "a 'drifter – "crashing" for a few nights' sleep in the home of anyone who would let him come in'" after his mother refused to allow him live with her. (*Id.* at p. 1130.) The son himself testified that he was homeless during that time, and he told the officer at the scene of the crash that he was uninsured. (*Id.* at pp. 1129-1130, 1132.) The appellate court held that the mother's policy did not insure the son.

Although there are some similarities between the facts of *Bluehawk* and those of this case,[6] there are some glaring differences. Lara's life was rather nomadic between September 2007 and January 2008, but she was by no means a "drifter," "crashing" with anyone who would let her in, or homeless. On the contrary, she had at least three reliable places to stay: the Alta Drive guest house, her sister's apartment in New York, and her parents' home, which had indisputably been her only dwelling both before and after her separation in August 2007. In *Bluehawk*, the mother and the son both insisted that the policy did not cover him; there has been no such insistence in this case. Most importantly for our purposes, the policy definitions are different. The Continental policy covered the mother and "members of her household." "Member of the household" was also a defined term. (*Bluehawk, supra,* 50 Cal.App.4th at p. 1128.) The Mercury policy, by contrast, does not limit coverage for relatives to members of a household; it defines a relative as someone "residing" with the named insured and does not mention households.

GEICO's favorite case, *Elkins, supra*, also diverges significantly from this case. The car-crashing daughter in *Elkins* was a 19-year-old college student, taking her first tentative steps toward independence by renting an apartment a short distance from her parents' house while she worked for the phone company. She was still heavily involved in her family's life – eating meals and attending church with them, baby-sitting her younger siblings, running errands, and using the family cars. (*Elkins, supra,* 52

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6 The son used his mother's address on his driver's license and received mail there. He also had keys to her house. (*Bluehawk, supra,* 50 Cal.App.4th at p. 1132.)

Cal.App.3d at pp. 537-539.) The State Farm policy also furnished a definition of "reside" – "when used with reference to the named insured's household, [resident or reside] means bodily presence in such household and an intention to continue to dwell therein. However, the named insured's unmarried and unemancipated children, while away from his household attending school, are deemed to be residents of his household." (*Id.* at p. 539.)

At the time of the accident in this case, Lara was 38 years old. After finishing her education, she had lived in New York for several years, far removed from her parents' home, and she had been married, albeit briefly. There was also no evidence that she was as heavily involved in her parents' lives at the time of the accident as the *Elkins* daughter was in hers.

Other cases are often of limited assistance in helping to resolve coverage issues. Seldom do the policy language and the factual circumstances of one case match up with the language and circumstances of another; the determination must be made by looking at the specific, and often unique, circumstances and applying the specific policy language to them. (See, e.g., *Castro v. Fireman's Fund American Life Ins. Co.* (1988) 206 Cal.App.3d 1114, 1120, and fn. 5.) As our Supreme Court has explained, "The proper question is whether the word is ambiguous in the context of *this* policy and the circumstances of *this* case." (*Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co.* (1993) 5 Cal.4th 854, 868.)

We conclude that "reside" as used in the Mercury policy in referring to coverage of relatives of the named insured is ambiguous in the context of this policy and these circumstances, primarily because it is unclear whether and how much of the relative's physical presence is required in order to qualify as "residing" with the named insured. The existence of a separate category of insured who must "inhabit" the "same dwelling" as the named insured in order to be covered casts additional doubt on the meaning of "reside." And the explicit acknowledgement in the policy that some relatives

– unmarried and unemancipated children – can reside elsewhere and still reside with the insured for coverage purposes makes the meaning of "reside" even more obscure. Taken together, these policy provisions strongly suggest that whether a relative "resides" with the named insured is more a question of intention or attitude than physical presence. Accordingly, we turn to the next step in interpreting an insurance policy.

B. The Insured's Objectively Reasonable Expectations and Resolving Ambiguity

To determine whether ambiguous policy language provides coverage, we try to determine the objectively reasonable expectations of the insured. (*Bank of the West v. Superior Court, supra,* 2 Cal.4th at p. 1265.) We consider what these expectations were "at the time the contract is made." (*Safeco Ins. Co. v. Robert S.* (2001) 26 Cal.4th 758, 766.)

When David applied for the Mercury policy, in 1996, Lara was still living in New York and had been there for about two years. She was not listed on the application as residing with him. Could David and Arline, the named insureds, reasonably expect that if one of their daughters came back home to live, the Mercury policy would cover her up to the policy limits when she drove one of their cars, even if she was not listed in the declarations? We think they could. The insuring clause covers "any relative" of the named insured. The definition section places only two requirements for coverage of a relative: (1) he or she must reside with the named insured, and (2) he or she must be related to the named insured by blood, marriage or adoption.[7]

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[7] The named insured must consult the definition section on a different page to learn that "any relative" in the insuring clause does not really mean *any* relative, but rather only those relatives who reside with the named insured. This format is misleading, because the insuring clause identifies persons covered as permissive users as the users themselves and "persons residing with such permissive user and related to such permissive users by blood, marriage or adoption . . . ." The presence of a "residing with" restriction on the permissive user's family in the insuring clause itself could easily lead the named insured to assume there was no such residential restriction on coverage for "any relative."

Lara returned to California in 2000 and lived with her parents at Glenmont Avenue for six years. There would presumably be no question that she was "residing" with them during that time, as she apparently had no other place to live. In 2007, Lara and her husband relinquished their apartment and moved in with her parents; even though she was married and in her mid-30's, she was once again "residing" with her parents. She stayed in the Glenmont Avenue house as her marriage broke up and her husband moved out.

During the three months between the separation and her accident, Lara divided her time among Glenmont Avenue, Alta Drive, and New York. But, as we have seen, prolonged physical presence in a particular place may not be necessary in order for a relative to reside with the named insured for coverage purposes. Under these circumstances, what would an insured reasonably expect the coverage situation to be? Given the lack of precision in the Mercury policy language, it is difficult to tell. (See *Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co., supra,* 5 Cal.4th at p. 868 [same provision may be clear or ambiguous depending on circumstances].) Clearly Lara did not have to "inhabit" the Glenmont Avenue dwelling; no coverage was claimed for her as a resident. But what connection did she have to have with the Glenmont Avenue house in order to "reside" there?

One reasonable response – the one promoted by Mercury – is that Lara had to spend all or most of her time at the Glenmont Avenue house, just as her parents did, and have no other place to live. Her forays to Alta Drive and New York severed her ties to Glenmont Avenue. Another reasonable response – GEICO's – is that Lara regarded the Glenmont Avenue address as her permanent base, even though she "hung her hat" (or, as the trial court said, slept and had her laptop) in other places. This interpretation relies on Lara's perception and perhaps on that of her parents as well, rather than her physical presence, to determine where she "resides." Her parents, or at least David (one of the named insureds), seem to have shared Lara's sense of being rooted at Glenmont Avenue

despite her frequent absences. "This is her home," said her father. "She can come and go as she pleases."

Both interpretations are reasonable under the circumstances. (See *Waller v. Truck Ins. Exchange, supra*, 11 Cal.4th at p. 18 ["A policy provision will be considered ambiguous when it is capable of two or more constructions, both of which are reasonable."].) We must therefore resolve the ambiguity in favor of coverage. (See *Powerine Oil Co., Inc. v. Superior Court* (2005) 37 Cal.4th 377, 391.) This rule of interpretation for insurance policies comports with the broader rule that uncertainty in "the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." (Civ. Code, § 1654.) Accordingly, we interpret "reside" in the Mercury policy to include the circumstance in evidence here, where the relative has some attachment to the named insured's home and regards the named insured's home as the permanent one, even though he or she may spend some time in other places.

II. Substantial Evidence Supporting Coverage

"[I]f stipulated facts leave an ultimate question of fact open for resolution, the substantial evidence rule applies. [Citation.] When a judgment resolves disputed factual questions, a reviewing court considers the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving conflicts in support of the judgment. [Citation.]" (*Employers Mutual Casualty Co. v. Philadelphia Indemnity Ins. Co.* (2008) 169 Cal.App.4th 340, 347.)

After examining the evidence, the trial court found that Lara regarded the Glenmont Avenue house as her permanent abode at the time of the accident. It was her mailing address, the address given on the court papers for her divorce, and the address on her driver's license, and it was clearly much more than a mail-drop. Lara kept clothes and personal possessions there.[8] She ran errands for her mother and drove her mother's

[8] As one saying has it, "It's not an empty nest until they get their stuff out of the garage."

car. She sometimes spent the night there and, in fact, was on her way to her parents' home on the night she had her accident. By contrast, when she remarried, she gathered up her possessions from both New York and Southern California and moved them to San Francisco, thus severing her ties with Glenmont Avenue. Substantial factual evidence supports the trial court's conclusion that Lara was "residing" at her parents' home for purposes of coverage under the Mercury policy when the accident occurred.

DISPOSITION

The judgment is affirmed. Respondent is to recover its costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.